IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19161 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHOBATKHAN HASANKHAN PATHAN - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 2 - Respondent(s)

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Appearance :
MR HARSHIT S TOLIA for Petitioner(s) : 1,
MR HEMANG PARIKH, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 11/07/2007

ORAL JUDGMENT

Rule. Mr. Hemang Parikh, Ld. AGP waives service of rule on behalf of respondents. At the request of the learned advocates the matter is

taken up for final hearing today.

2. The petitioner has challenged the impugned orders which are at Annexures A, B and C. The petitioner's license for sale of kerosene as a retailer has been cancelled. The stock possessed by the petitioner is also ordered to be confiscated and fine of Rs.12,288/- has been imposed upon him for committing the irregularities that have been stated in the said orders. The petitioner was distributing kerosene in Liliya village in Liliya Taluka of Distirct Amreli. Limited relief that is sought in this petition is that the amount of fine imposed upon the petitioner be reduced.

3. I have heard Mr. Shirish Tolia, learned advocate for Mr. HS Tolia for the petitioner and Mr. Hemang Parikh, Ld. AGP for the respondents. Mr. Tolia's submission is that the petitioner is aged person. He has lost the source of his livelihood. Not only that but the amount which was deposited with the Department has been forfeited and fine of Rs.12,288/- is imposed. Fine is double the amount of the value of kerosene which is alleged to have been illegally sold by the petitioner. Mr. Tolia, to support his submission, has drawn my attention to averments made in the proceedings before the authorities below.

4. Considering the fact that the petitioner is a poor person and now he does not have any source of income, some leniency is required to be shown in the matter of imposition of fine. While doing so, the Court is also required to keep in view that by the aforesaid orders, not only the petitioner is punished,

but his family members are also penalized. In view of the same, the order passed by respondent no. 3 dated 2/5/2003 is required to be modified. The fine of Rs.12,288/- is ordered to be reduced to Rs.6,144/-.

With the aforesaid modification, this petition is partly allowed. Rule made absolute to the aforesaid extent.

[Akshay H Mehta, J.]

* Pansala.